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UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D. C.

INSTRUCTIONS CONCERNING THE CONDUCT OF
INVESTIGATIONS.

1. *Object of investigations.*—The object of all investigations by the commission is to ascertain all the facts relating to the matter under investigation. This should never be lost sight of by the investigator, and he should never permit himself to be influenced in the slightest degree by political or religious bias or by any other motive than a desire to find and report the facts exactly as they are. If an investigator is not fair and impartial he is false to the commission, injurious to the public service, and unfitted for the duty assigned to him. He must remember that he is not in any sense a prosecuting attorney and must bend every energy to the ascertainment of all the pertinent evidence on both sides of every case investigated by him.

2. *Duty to give testimony.*—Civil Service Rule XIV provides that—

“It shall be the duty of every officer and employee in the executive civil service, and of every applicant or eligible for a position therein, to give to the commission, or its authorized representatives, all proper and competent information and testimony in regard to matters inquired of arising under the civil-service act and rules, and to subscribe such testimony and make oath or affirmation to the same before some officer authorized by law to administer oaths.”

The attention of any person in the executive civil service of the Government who shows a reluctance to testify should be called to the requirement of this rule, and his refusal to testify should be immediately reported to the commission.¹

While absent from his duties for the purpose of testifying before a representative of the commission such employee is entitled to his regular compensation.²

¹ It is within the power of the President so to modify the civil-service rules as to impose upon all officers and employees in the public service the duty of giving to the commission or its authorized representatives all proper and competent information in regard to matters inquired of and to subscribe to and make oath to such testimony before some officer authorized by law to administer oaths. The imposition of such a duty upon every officer and employee in the public service is neither unreasonable nor unsuitable. It is clearly within the exercise of the executive power, and its legality can not be doubted. (Opinion Atty. Gen., Dec. 2, 1901, 23 Op., 595.)

² A per diem employee of the Frankford Arsenal, Philadelphia, Pa., absent from duty three and one-fourth hours under a summons, in giving testimony concerning alleged violations of the civil-service regulations, was denied payment for the time he was away from his regular work, because the duty performed in giving testimony was considered by the Ordnance Department as having no relation to his service as an employee therein. The Comptroller of the Treasury held, however, that he “should be treated as in a duty status and as in the performance of duty under his employment in going, returning, and attending on the commission, and should be paid the pay due him for such time from the appropriation for the Ordnance Service governing his employment.” (Decision, Comp. Treas., Aug. 17, 1911. See also 17 Comp. Dec., 584; 5 Comp. Dec., 797; 9 Comp. Dec., 276.)

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3. **Authority to administer oaths.**—A person authorized by the Civil Service Commission to administer oaths in making an investigation has full authority under the law to do so.

4. **Course of investigation.**—The usual and natural course is for the investigator to obtain first the facts sustaining the charges, and after that the facts refuting the charges; but this procedure will in some cases be somewhat varied, depending upon circumstances. Usually the accused will request the investigator to interview certain persons in his behalf; but, with or without a request from the accused, the investigator should interview those from whom he has reason to believe he can get facts favorable to the accused, just as he interviews those from whom he has reason to believe he can get facts unfavorable to the accused. Sometimes it is necessary to interview a witness more than once. As a rule witnesses should not be examined in the presence of others.¹ The investigator should continue the investigation until he is satisfied that he has arrived at the truth or has practically exhausted the means of arriving at the truth. He should give a statement of the charges to the accused and procure a definite and detailed statement from him in answer.

5. **Communicating charges to the accused.**—In all ordinary cases the accused should be fully informed, in writing or orally, of the charges against him, with reasonable particularity as to time, place, or other circumstances connected with the offenses charged, and he should be given ample opportunity to refute the charges.² Accused employees sometimes demand a copy of the charges, claiming or believing that they are entitled to such a copy in view of the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), relating to the procedure in removals. When the investigator does not deem it necessary to furnish such a copy the employee demanding it should be informed that the accusations or complaints which are being investigated do not constitute "charges" within the meaning of this statute, nor is the investigation a removal proceeding, but that it is merely an inquiry for the purpose of determining whether or not there is a basis for preferring charges and instituting proceedings for removal or other discipline.

But if the proof obtained is ample to establish a violation of a criminal statute it is usually best not to inform the accused of the charges, or to do anything that will put the accused in a position to embarrass criminal proceedings, by tampering with witnesses or in any other manner. In this matter the investigator should be guided by his best judgment. There may be extreme cases where it may even be desirable that the accused be kept in ignorance of the fact that an investigation is being made.

6. **Hearsay evidence.**—When a witness tells what some one else told him, his testimony, which is usually called "hearsay evidence," is ordinarily regarded as of slight value, and as a general rule is inadmissible in courts of law. It is therefore desirable whenever possible to get the direct evidence of witnesses who can testify as to facts within their own personal knowledge. Hearsay evidence is often of value to the investigator in pointing out a source of direct evidence, for he can go to the person who is reported to have made certain statements and ascertain directly from him what he knows about the matter under investigation. Again, it is sometimes desired to ascertain what a person's general reputation is in the community in which he lives; for example, his reputation for truth and veracity. A person's general reputation in the community for truth and veracity is what the people of the community generally think of him in this regard, as indicated by what they say. In such cases, of course, it is proper to permit a witness to testify as to what is generally said by the people

¹ See section 10.

² See section 9.

of the community in regard to the disposition of the person to tell the truth. But usually specific facts, not reputation or opinion, are desired by the commission; for example, the opinion of a witness that a Government employee has violated the political activity rule is of little value except as it is backed up by a statement of specific acts constituting such violation.

7. Motive of the complainants.—Accused employees sometimes question the motives of those making the charges, claiming that they are prompted, not by a desire to promote the public good, but by personal animosity, partisan bias, or other improper considerations. These should be informed by the investigator that the object of the investigation is to ascertain the truth, whatever it may be, and that the motives of those making the charges and the motives of all persons examined, so far as their motives are known, will be carefully considered in determining the degree of credence to be given to the statements they make.

If the person making the charges is in the Government service or is an applicant for admission thereto, and the investigation proves that the charges are false, the investigator should cover this feature of the case thoroughly in order that appropriate action may be taken with respect to the person preferring such false charges.

8. Representation by attorney.—Attorneys for the complainant or the accused employee are not permitted to be present during or to participate in any investigation conducted by representatives of the commission.¹

9. Local friction and discord to be avoided.—The investigator should not reveal the identity of the person furnishing the information upon which the investigation is based, nor the identity of any witness, nor should he heed any request of the accused to be confronted by those who have furnished information against him. Often the accused knows, or thinks he knows, who are furnishing information against him and the nature of the information. It is not desirable either to increase or verify his knowledge as to these matters. In performing his work the investigator should occasion as little discord and friction in the community as possible. In no way can the investigator display more tact and judgment and good common sense than in the manner in which he eliminates personalities while securing the facts.

10. Examination of witnesses.—As to form, the testimony of witnesses, named in the order of desirability, is as follows:

1. Written testimony subscribed and sworn to by the witness, unless the witness is orally examined under oath and the testimony is taken stenographically.

¹ It has not been the practice of the commission in its investigations to permit uninterested parties to be present. There is no need for employees or their accusers to be represented by attorney, as it is not a prosecution but simply an effort impartially to ascertain the facts, and the representatives of the department and the commission will afford the parties all necessary protection. An investigation of this sort is not conducted in the same manner as a trial in a court of justice, and there is no adherence in such an investigation to rules of procedure or rules of law with which a layman is not familiar and because of which in a formal hearing or in a court of justice it is desirable that he have the aid of an attorney. The whole object of such an investigation is to ascertain the facts for the commission, and the investigators will accept testimony and evidence from any credible source; they are in no sense conducting a trial, but they are gathering evidence upon which the commission may form judgment. The argument of counsel before them and the participation of counsel in their work can have but little, if any, effect upon the outcome of the case, because it will be finally decided by the commission and the department concerned, and not by the investigators. After the investigation has been completed and the report of the investigators has been submitted to the commission, the parties may, if desired, be heard in person. This is the usual practice in administrative investigations, and the statute governing removals from the classified service, recognizing this, provides that no trial or hearing shall be required except in the discretion of the removing officer.

2. Written statements signed by the witness.

3. Oral statements made to the investigator.

If it is practicable to obtain only the oral statement of a witness, the investigator in reporting to the commission should be very careful on every account to set forth accurately what the witness said to him. The investigator has a special interest in getting the testimony of witnesses in writing. Occasions have arisen where an investigator relied upon the oral statement of a witness as a basis for an assertion in his report, to be confronted later with a written statement from the same witness wholly contradictory in its nature. The embarrassment attending such an occurrence would be avoided by obtaining written statements from all witnesses, subscribed and sworn to whenever practicable. Documentary evidence, such as letters, should be secured whenever they are material and can be obtained. The testimony of all Government employees should be under oath. In all important cases, especially those which may result in criminal prosecution, any statement of the accused, whether made orally or in writing, under oath or otherwise, should be witnessed by some reliable third person.

11. **Assurances of secrecy.**—Sometimes, though rarely, it is necessary in order to secure desired testimony to specially assure the witness that what he says will be treated by the commission as strictly confidential; that the testimony he gives will not be known in the community unless he himself gives it publicity; and that his evidence will be solely for the files of the commission. Such special assurances should be noted by the investigator in his report to the commission. Usually the only assurance that will be necessary is that while the nature of a person's testimony may be disclosed, the identity of the person giving it will not be.

No promise of concealment of testimony should be made to those in the executive civil service who are required to testify by the rule cited. If they fear that an attempt will be made to punish them for testifying, either by the accused or by a superior officer, they may be told that if they testify fully and frankly the commission will make every effort to shield them and protect them from any discrimination which a superior officer may attempt to exercise because of the giving of such testimony; also that all testimony obtained in an administrative investigation is regarded as confidential and will not be disclosed unless it is deemed necessary to do so. If there appears among the employees in an office a general reluctance to testify because of fear of the result the investigator should request the head of the office to announce to his subordinates that they may testify freely without being discriminated against because of such testimony.

12. **Joint investigations.**—When a representative of the commission cooperates in an investigation with a representative of a department where some of the charges are under the jurisdiction of the commission and some are exclusively under the jurisdiction of the department the representative of the commission may actively participate in the entire investigation, but he shall make no recommendation except as to such charges as are under the jurisdiction of the commission.

Investigators of the commission should not sign written charges which are served upon a person under joint investigation. The representative of the commission should consult his own judgment and form his opinion independently, giving such weight to the opinion of the departmental investigator and his reasons therefor as may commend themselves to the unbiased judgment of the commission's representative.

13. **Reports of investigators.**—Reports should be in duplicate, and, if convenient, the accompanying testimony also. The report should contain a clear

and concise statement of the charges, the answer of the accused, and the evidence obtained, arranged, so far as possible, in the order of the charges, and the specific points thereof. The report should end with the conclusions of the investigator and his recommendation as to the action to be taken, although the commission recognizes the fact that in many cases in the matter of making recommendations the investigator may labor under the disadvantage of not knowing what action is usually taken in similar cases.

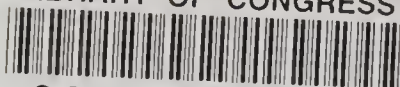
It is not the policy of the Post Office Department to suspend clerks and carriers in post offices for offenses involving violations of the political-activity rule. Reduction in grade is the usual penalty in such cases, and it is requested that recommendations for the discipline of clerks and carriers in the Post Office Service be made on that basis.

So far as he can, the investigator should report his impression and opinion of the reliability, character, and honesty of the various witnesses. Especially should he do so when there is a direct conflict of testimony as to some important matter, for in such cases the kind of witnesses rather than their number is the consideration of prime importance.

14. Personal judgment and tact of investigators.—Investigators differ widely. For instance, some may excel in reading character and in judging the reliability of witnesses; others may excel in drawing the correct inferences from equivocal circumstances. No two cases are alike. Therefore only general directions can be given to investigators, and they must to a large extent rely upon their own individual judgment, tact, and prudence to guide them in the varying details of the different cases assigned them.

15. Expense accounts of local secretaries.—Local secretaries who are instructed to make investigations involving expenditure for travel will, as soon as practicable after the conclusion of the investigation, transmit their expense accounts to the commission on the form provided. The account must be accompanied by a copy of the letter authorizing the investigation.

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